

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

INVENTORS: Niniane Wang, Stephen R. Lawrence and Christopher M. Prince
SERIAL NO.: 10/813,818
FILING DATE: March 31, 2004
TITLE: Methods and Systems for Identifying an Image as a Representative Image of an Article
EXAMINER: Yubin Hung
GROUP ART UNIT: 2624
ATTY. DKT. NO.: 24207-10097

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Dated: _____

By: // _____

Brian M. Hoffman, Reg. No. 39,713

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. § 1.705(b)

SIR:

This letter is to request reconsideration of the Patent Term Adjustment (PTA) under Rule 37 C.F.R. § 1.705(b). Specifically, in view of *Wyeth v. Dudas*, 580 F. Supp. 2d 138 (D. D.C. 2008), the PTA calculation does not account for the total period of delay under Rules 702(a) and 702(b) (adjusted by any delay accorded to overlapping days under Rule 703(a) and Rule 703(b)). The \$200 fee required by Rule 18(e) is authorized herewith. The calculation of the corrected PTA and the bases for the adjustment are provided below.

Although a patent has not yet issued, Applicants submit this request prior to payment of the issue fee pursuant to Rule 705 because Applicants believe the PTA calculation in the Notice of Allowance is incorrect. If the Office decides to hold this request in abeyance, pending issuance of the patent, Applicants concur with that decision.

Calculation of Periods for Patent Term Adjustment

Under Rule 703(a)

The PTO determined it incurred 944 days of delay under Rule 703(a) for the period beginning 14 months from the filing date (June 1, 2005) until the mailing of a Non-Final Rejection on December 31, 2007. Applicants calculate the relevant period to be from June 1, 2005 to December 31, 2007, and agree with the determination that the PTO incurred 944 days delay under 703(a). Applicants reserve the right to request additional PTA under Rule 703(a) in the event the PTO does not timely issue the instant patent following payment of the issue fee.

Under Rule 703(b)

The application was filed on March 31, 2004, and the period exceeding three years after the date on which the application was filed begins on April 1, 2007 (three years from the day after the filing date). Currently, Applicants calculate the relevant period to be from April 1, 2007 to September 3, 2008 (the date a Request for Continued Examination was filed), or 522 days.

Reduction Under Rule 704

The PTO determined no Applicant delays. Applicants do not dispute the PTO determination of no Applicant delays.

Request for Patent Term Adjustment in View of *Wyeth v. Dudas*

In the PTOL-85 mailed March 5, 2009, the PTO calculated that Applicants are entitled to 944 days of PTA as the difference between the delay under Rule 702(a) and the Applicant delay under Rule 704. According to *Wyeth v. Dudas*, 580 F. Supp. 2d 138 (D. D.C. 2008), the Patent Term Adjustment statute (35 U.S.C. § 154) does not permit the PTO to excuse one source of delay simply because it caused another source of delay by interpreting delays under Rule 703(a) and Rule 703(b) to be overlapping when such delays do not occur on the same calendar days. Therefore, Applicant requests the PTA be based on the sum of delays under Rules 703(a) and 703(b).

Applicants believe that the delays under Rules 703(a) and 703(b) in this case are overlapping 275 days on the same calendar days. In other words, the PTO delay from June 1,

2005 to December 31, 2007 (delay under Rule 703(a)) overlaps with the PTO delay from April 1, 2007 to September 3, 2008 (delay under Rule 703(b)). Therefore, Applicant requests the PTA calculation based on the sum of delays under Rules 703(a) and 703(b) minus the days of Applicant delay, and further minus the overlapping days under Rule 703(a) and Rule 703(b), yielding a calculation of $944 + 522 - 0 - 275 = 1191$ days.

Applicant reserves the right to request additional PTA in the event the PTO does not timely issue the instant patent following payment of the issue fee.

No Terminal Disclaimer

This application is not subject to a terminal disclaimer.

AUTHORIZATION

The Commissioner is hereby authorized to charge the fee set forth in 37 C.F.R. § 1.18(e) to Deposit Account No. 19-2555. The Commissioner is hereby authorized to charge any additional fees which may be required for consideration of this communication, or credit any overpayment, to Deposit Account No. 19-2555.

Respectfully Submitted,
NINIANE WANG, ET AL.

Date: May 4, 2009

By: /Brian Hoffman/

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